

**Statement of  
The Honorable James L. Oberstar  
Subcommittee on Water Resources and Environment  
Hearing On  
“Discharges Incidental to the  
Normal Operation of a Commercial Vessel”  
June 12, 2008**

Today's hearing is an outgrowth of the discussion that took place last month at our Full Committee markup.

During the discussion on H.R. 5949, the Clean Boating Act, several members expressed their concern about a looming Court-ordered deadline with respect to discharges from commercial fishing vessels, and other small commercial vessels. At that time, I committed to holding a hearing on the issue of discharges from commercial vessels in order to provide members with the opportunity to understand what pollutants are discharged from commercial vessels, and to discuss the appropriate Federal mechanisms to address these pollutants in a uniform, ecologically-protective, and enforceable manner.

As I stated during the markup, I am aware of the uncertainty caused by a 2005 decision of the Federal District court for the Northern District of California with respect to “discharges incidental to the normal operation of a vessel.” For decades, the Environmental Protection Agency had, in force, a regulatory exclusion for such discharges; however, this exclusion was overturned by this decision on the grounds that it was overbroad, and exceeded the Agency's authority.

As a result, all vessels, other than vessels of the Armed Forces, face a September 30, 2008 deadline by which they need to comply with the permitting requirements of the Clean Water Act.

However, contrary to the rhetoric that every vessel owner will be required to obtain an individual 402 permit, this is not what the Clean Water Act requires. Compliance with the NPDES requirements of the Clean Water Act can be accomplished through either an individual or general permit. According to today's testimony from the administration, it appears that EPA is crafting a general permit to cover such discharges by the September 2008 deadline.

That being the case, I believe that today's hearing is important because it gives us the opportunity to rationally explore what is covered by the phrase “discharges incidental to the normal operation of a commercial vessel.”

What is most telling from today's testimony is the paucity of scientific information on what might be covered by the term “discharge incidental to the normal operation of a commercial vessel.” According to the testimony of EPA, from its current understanding of discharges from commercial vessels, the agency has identified 28 discharges incidental to the normal operation of a vessel – including pollutants that can have a significant impact on water quality and the marine environment.

I believe we must approach how best to address discharges from commercial vessels with caution. First, we must recognize that the Federal agencies do not have sufficient information on the universe of discharges that may be considered “incidental” to the normal operation of a commercial vessel, or on their potential impact to the nation’s waters or the marine environment. Until the time we have a better understanding of what we are talking about, we should approach this issue carefully.

Second, while I am sure there will be significant debate on whether the NPDES authorities of the Clean Water Act are the appropriate mechanism to address discharges from commercial vessels, today’s hearing will give us the opportunity to discuss how to address the release of pollutants into the marine environment in a national, environmentally sound, and uniform manner, including the potential to utilize the broad range of authorities within the Clean Water Act to address these pollutants.

Finally, I want to renew my concern on our ability to address the issue of discharges from recreational vessels in a timely manner.

As I noted during the Committee markup, the Senate is unwilling to amend the Clean Boating Act to address discharges from commercial vessels. Therefore, as we continue the discussion today on how best to address pollutants discharges from commercial vessels, we must be mindful that we are a bicameral Congress, and we should pursue a legislative strategy that responds to the concerns of the 13 million recreational boaters, as well as the concerns raised today, in a manner that is likely to reach the President’s desk.

I remain committed to exploring the concerns raised by our members, especially with respect to small commercial fisherman; however, I believe we must move cautiously on this issue, and not act before we understand the consequences of pollutants discharged from commercial vessels.